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COUNSEL'S OFFICE

January 26, 1998

Mr. Lester Snow, Director  
CALFED Bay-Delta Program  
1416 Ninth Street, Room 1155  
Sacramento, California 95814

Dear Mr. Snow:

The CALFED Bay-Delta Program is the most ambitious and comprehensive undertaking of its kind in the United States. It embodies several program components when integrated together form a strategy to ensure a healthy ecosystem, reliable water supplies, good water quality, and stable levees in California's Bay-Delta. These components include an Ecosystem Restoration Program, a Water Use Efficiency Program, a Water Quality Program, a Levee System Integrity Program, a Watershed Management Program, a Water Transfers Policy, a Storage and Conveyance component, and an Assurances and Financing Package. When taken as a whole the CALFED Bay-Delta Program will meet the above-stated objectives while adhering to a set of six Solution Principles. According to these principles the solution must: 1) reduce conflicts among beneficial uses of water; 2) be equitable; 3) be affordable; 4) be durable; 5) be implementable; and 6) have no significant redirected impacts.

While the CALFED Program may offer many potential benefits to agriculture, it is apparent that each CALFED program element could result in significant impacts to the California agricultural resource base, particularly agricultural land, agricultural water supply, and agricultural water quality; in other words, the agricultural environment. These impacts may have associated socio-economic impacts to local communities, local jurisdictions, and local economies. It is imperative that these environmental and economic impacts be identified and disclosed in the Programmatic EIR/EIS in order to assure continued collaboration of all stakeholders with the CALFED Program.

Since agricultural land and its associated water are finite resources, the loss of this productive use is considered a significant adverse impact to the existing environment which must be avoided, reduced, or mitigated to a level of insignificance. Programmatic alternatives and measures to avoid, reduce, and mitigate impacts on agriculture are needed at the programmatic level.

It is the CDFA position that to maintain consistency with the CALFED Solution Principles and the Governor's Water Policy, identifying these agricultural resources impacts as unmitigable with an accompanying Statement of Overriding Consideration in the CEQA document is unacceptable. Appropriate mitigation measures at both the programmatic and project specific levels exist, are feasible, and implementable.

There is a long history of State public policy that recognizes the importance of prime and unique farmland and farmland of state-wide importance. These policies establish a solid foundation to support a CALFED action to develop a comprehensive mitigation strategy to address adverse impacts to agricultural resources. General State policies include:

- One of the major principles of the state's agricultural policy shall be to sustain the long-term productivity of the state's farms by conserving and protecting the soil, water, and air which are agriculture's basic resources. In promoting and protecting the agricultural industry, the Legislature will review actions for their effects on 13 factors, including productive agricultural land, and agricultural water supplies. (Thurman Agricultural Policy Act; FAC Sec. 821, 822)
- The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation. (Williamson Act; GC Sec. 51220 (a))
- The agricultural lands of the state contribute substantially to the state, national, and world food supply and are a vital part of the state's economy. (PRC Sec. 10201)
- It is the intent of the Legislature to protect farming and ranching operations in agricultural areas from nonfarm or nonranch land uses that may hinder and curtail farming or ranching operations and encourage long-term conservation of productive agricultural lands in order to protect the agricultural economy of rural communities, as well as that of the state, for future generations of Californians. (PRC Sec. 10202)
- The legislature recognizes that premature and unnecessary development of agricultural lands to urban uses continues to have adverse effects on the availability of such lands for agricultural uses and on the economy of the state. (Resolution Ch 81, Statutes of 1981)
- The maximum amount of prime agricultural land in the coastal zone shall be maintained in production to protect the agricultural economy. (CA Coastal Act; PRC Sec. 30241)
- Lands suitable for agricultural use shall not be converted to nonagricultural uses unless continued agricultural use is not feasible or such conversion would preserve prime agricultural land. (PRC Sec. 30242)

- No agricultural activity, operation, or facility conducted for commercial purposes, in a manner consistent with proper and accepted customs shall become a nuisance due to any changed condition in or about the locality, after it has been in operation for more than 3 years. (Civil Code Sec. 3482.5)

There is also extensive Federal policy that supports the protection of agricultural lands. The Federal Farmland Protection Policy Act of 1981 (FPPA) provided for the development and use of the LESA model to assess the impacts of Federal projects on agricultural land. The final assessment methodology was approved in June, 1994. This methodology was used (inaccurately) in the Prospect Island project environmental documentation. There is additional federal intent language in the Farming for the Future Act of 1988, and the Farmland Protection Program included in the Federal Agricultural Improvement and Reform Act of 1996. Congressional intent language includes:

the Nation's farmland is "a unique natural resource", and that each year "a large amount of the Nation's farmland" was being "irrevocably converted from actual or potential agricultural use to non agricultural use," in many cases as a result of action taken or assisted by the federal government. The FPPA directs federal agencies to identify and take into account the adverse effects of federal programs on the preservation of farmland; consider alternative actions, as appropriate, that could lessen such adverse effects; and assure that such federal programs, to the extent practicable, are compatible with state government, local government, and private programs and policies to protect farmland. (Fed. Reg., June 17, 1994, p 31110)

The preferred method of dealing with potential impacts is to avoid them through a reasonable range of alternatives. CALFED has chosen not to subject those elements of it's program (the four Common Elements) with the greatest potential for impacts on the environment (including agricultural resources and human use of the land for agriculture) to alternatives analysis. This approach may prove to be problematic in attempting to conform to the requirements of CEQA.

The CDFA is charged under law to protect and enhance California agriculture. Looking at California agriculture as a statewide environmental resource, it is the CDFA position that:

- CALFED should adopt a policy to maintain the productivity and flexibility of agricultural resources to the greatest extent practicable when implementing the CALFED Program in its entirety.
- A supporting CALFED Right-to-Farm policy should also be explicitly stated.

These two guiding policies would lay the foundation necessary to adhere to the solution principle of no redirected impacts.

CALFED should also establish a policy that to the greatest extent practicable, CALFED goals and objectives will be met through CALFED actions that maintain land in private ownership in order to best preserve the economic and environmental productivity of that land. Rather than through the wholesale acquisition of land by Federal and State government agencies, these agencies will establish cooperative programs to work with private landowners to restore and rehabilitate the ecosystem to meet CALFED program objectives.

**Programmatic level and site specific mitigation:**

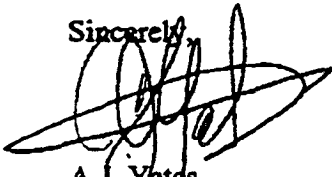
- If agricultural land is converted to another use, protect other agricultural land of equivalent productive potential. Standard of adequacy: Up to three to one, land equivalency to be determined by CDFA in consultation with Department of Conservation and the USDA-NRCS.
- If agricultural practices are to be restricted, protect other agricultural land for agricultural use without restrictions. Standard for adequacy: One to one, to be reviewed and adjusted on a case by case basis.
- If agricultural water resources are acquired for other uses, provide an equivalent mitigation water supply for agricultural use on other lands. Standard of adequacy: One to one at the point of use, considering water quality, timing, cost and reliability of supply. Since water supply is a limiting factor in agricultural resource productivity in many areas of the State, and CALFED's fundamental mission relating to a reliable and adequate water supply, it logically follows that providing an adequate and high quality water supply to other sites or regions is a reasonable approach to mitigation. This is not a new concept. Off-site mitigation for impacts on environmental resources is standard practice in CEQA. For example the Department of Fish and Game has standards for creation, maintenance, and protection of wetlands to offset unavoidable impacts on existing wetlands.
- Establish a CALFED policy that a portion of any newly developed CALFED water supply is identified as agricultural mitigation water, based on the amount of agricultural water redirected to other uses as a result of CALFED actions. Critical considerations include volume, quality, timing of availability, and affordability.
- When agricultural land conversion includes land with riparian or pre-1914 water rights, CALFED should develop a mechanism whereby this now unallocated agricultural water is made available to other agricultural users.

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- Development agreements - CALFED agencies developing habitat through agricultural land conversion agree to develop agricultural infrastructure, buffers, and other tangible support for remaining agricultural lands.
- Establish buffers as part of habitat restoration projects, or compensated for if on agricultural land. These buffers should have vegetation compatible with farming and habitat objectives. For example, vegetation that has the potential of harboring agricultural insect pest should be avoided. Those that provide refuge for beneficial insects should be encouraged.
- Easements - purchase and/or transfer of development rights programs. This mitigation alternative does not avoid or reduce the impact or offset or replace the lost productivity. Nevertheless, preservation of appropriate portions of the resource base could be an acceptable mitigation. This could be accomplished via easements.
- For flood-prone areas, purchase flood easements and protect future agricultural uses while repairing existing levees as the preferred flood management strategy rather than developing an extensive levee setback program.
- Examine additional structural as well non-structural alternatives to achieving project goals which would not impact the agricultural resources of the State.
- A Planned Unit Development approach to habitat development to minimize adjacent land use conflicts with remaining agriculture lands.
- Establishing exclusive agricultural zoning. While this is more of a local land-use issue, the potential to coordinate such an effort with the Delta Protection Commission and affected counties within and outside the Delta is quite real.
- Phasing of specific component implementation can provide partial mitigation, or through adaptive management result in avoiding impacts to agricultural resources.

I hope this overview is useful as you continue to develop sound policy in this regard.

Sincerely,



A.J. Yates  
Undersecretary